

No. 1227-ASOIII-Lab-69 4985.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M s Frick India Ltd., Mathura Road, Faridabad :—

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD.

Reference No. 78 of 1968.

between

Shri Ram Lakhan Workman and the management of M s Frick India Ltd., Mathura Road, Faridabad.

Present—

Shri Roshan Lal Sharma, for the workman.
Shri S. L. Gupta, for the management.

AWARD

Shri Ram Lakhan was in the service of M s Frick India Ltd., Mathura Road, Faridabad, as a helper. His services were terminated on the ground that he was absent without leave for more than 10 days. This gave rise to an industrial dispute and the Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette Notification No. ID/FD 324A 22360, dated 2nd September, 1968.

Whether the termination of services of Shri Ram Lakhan was justified and in order. If not, to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties on receipt of which a statement of claim was filed on behalf of the workman and the management filed their written statement. The management have raised a preliminary objection that the workman has raised a demand in June, 1968 through the General Labour Union and this demand notice was filed by the Conciliation Officer. Now the claimant has again raised a dispute,—*vide* notice dated 29th June, 1968 on the basis of which the present reference has been made. It is pleaded that the Government of Haryana was not competent to review their previous decision and as such the reference is not valid. It is further pleaded that the General Labour Union is not competent to raise the present dispute and the dispute has not been properly espoused. On merit it is pleaded that the workman Shri Ram Lakhan was employed as a daily rated casual workman on 2nd February, 1967 at Rs 2.75 paise per day and he proceeded on leave from 1st May, 1968 to 5th May, 1968. He then sent an application through post for extension of leave from 6th May, 1968 to 11th May, 1968 and thereafter he did not report for duty and his name was struck off after waiting for him for sufficiently long time in accordance with the provisions of Model Standing Orders.

The pleading of the parties gave rise to the following issues.

1. Whether the first notice of demands was rejected on merits and for this reason this reference is not valid ?
2. Whether the claimant did not report for duty after the expiry of leave and his name was struck off from the rolls by reason of his long unauthorised absence ?
3. Whether the present dispute has not been raised in accordance with the law ?

Issue No. 1. There is no evidence that the workman gave any notice of demands previously which was rejected and for this reason the present reference is not valid. I find this issue in favour of the workman.

Issue No. 3. This issue has not been pressed.

Issue No. 2. Shri G.R. Chopra, Personnel Officer of the respondent concern has stated that the claimant proceeded on leave from 1st of May, 1968 to 6th of May, 1968 and thereafter he did not come and so after waiting for him for 10 days his name was struck off. The learned representative of the management during the course of argument frankly conceded that this statement was not very accurate. The learned representative pointed out that the correct position was as given in para No. 2 on merits of the written statement. According to the averments in this para the claimant proceeded on leave with effect from 1st May, 1968 to 5th May, 1968 and then he sent an application through post for extension of leave from 6th May, 1968 to 11th May, 1968 and then he absented himself from duty without any information.

The version of the workman is that he proceeded on 15 days leave on account of the illness of his father and on the expiry of his leave he reported for duty but the Personnel Officer Shri Chopra did not permit him to enter the Gate and resume the duty on the ground that his name had been struck off. The claimant maintains that he had given an application in writing which was duly sanctioned but he did not remember the date and month of the year when he proceeded on leave. In order to rebut the correctness of this version the management have produced the original application marked Exhibit M.1 which the claimant sent under registered cover from his village. In this application the claimant asked for extension of his leave from 6th May, 1968 to 11th May, 1968. The claimant was confronted with this application. He admits that the application Exhibit M.1 does not bear his signatures and that he did apply for extension of leave but he maintains that he had proceeded on leave on 8th of month for 17th days and then he applied for extension of leave for six days and he reported for duty on the 2nd of the following month. The workman could not explain the date which are as mentioned in the leave application Exhibit M.1. Since the application Exhibit M.1 admittedly bear the signatures of the claimant and the claimant also admits that he did send an application for extension of leave under registered cover, there is no reason to doubt the correctness of the dates as mentioned in the application Exhibit M.1. The version as given by the management also corroborate the correctness of these dates. It must therefore be held that the claimant had

proceeded on leave prior to 6th May, 1968 and that he had asked for extension of leave from 6th May, 1968 to 11th May, 1968. It is not the case of the claimant himself that he reported for duty on 12th May, 1968 after the expiry of the period for which had applied for leave and he was not permitted to resume duty. According to the version of the management the claimant did not report for duty for a sufficiently long time after the expiry of his leave and so his name was struck off on 24th May, 1968. According to the version of the claimant himself, he reported for duty on the second of the month. Since the applicant had only asked for extension of leave up to 11th May, 1968, it must be held that there was no justification for his absence after 11th May, 1968 and his name has been rightly struck off.

The learned representative of the claimant has submitted that the claimant did not over stay and that he reported for duty immediately after the expiry of the period for which he had asked for leave and since the claimant is illiterate and he did not keep any memorandum of the dates for which he had applied for leave and the dates on which he reported for duty, the statement of the claimant should not be literally accepted regarding the date on which he proceeded on leave and the date on which he reported for duty. The submission of the learned representative of the claimant appears to be correct because the claimant while mentioning the dates also stated that he does not remember the month in which he proceeded on leave and the month in which he reported for duty. It is, therefore, clear that the memory of the claimant is not helping him and there is a confusion in his mind regarding the date on which he proceeded on leave and the date on which he reported for duty but the claimant cannot derive any benefit because his memory is not helping him. The burden of proving that the claimant reported for duty after the expiry of his leave lay upon him and he has failed to discharge it, there is no evidence on record that the claimant reported for duty after the expiry of his leave and it must therefore be held that the order of the management striking of his name from the rolls on account of his long absence was justified and in order. The claimant is not entitled to any relief. I give my award accordingly.

Under the circumstances of the case I made no order as to cost.

The 18th February, 1969.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 466, dated 20th February, 1969.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

Dated 18th February, 1969

No. 1226-ASOIII-Lab 69/4988.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Lakshmi Rattan Engineering Works, (P) Ltd; Faridabad;

BEFORE SHRI P. N. THUKRAL PRESIDING OFFICER LABOUR COURT FARIDABAD.
Reference No. 43 of 1968

Between

Shri Daulat Ram & Tara Chand workmen and the management of M's Lakshmi Rattan Engineering Works (P) Ltd; Faridabad.

Present.-- Shri Darshan Singh for the workman.
Shri G. L. Likhiam, Senior Clerk for the management.

AWARD

Sarvshri Daulat Ram and Tara Chand were in the service of M's Lakshmi Rattan Engineering Works, (P) Ltd; Faridabad as helpers. Their services were terminated and this gave rise to an industrial dispute. The President of India in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,--*vide* Government Gazette Notification No. ID/FD/12003, dated 6th May 1968.

Whether the termination of services of Sarvshri Daulat Ram Tara Chand was justified. If not, to what relief are they entitled?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workmen and the management filed their written statement. On behalf of the workmen it has submitted that the workmen were permanent employees in the respondent concern and their services were terminated on the ground that their work was not satisfactory and up to the mark without giving them any opportunity to show cause. It is alleged that an industrial dispute regarding the grant of gratuity were pending before the Industrial Tribunal but the management did not even care to seek the permission/approval of the Tribunal before terminating the services of the two workmen concerned and thus committed a breach of the provisions of section 33 (1) of the Industrial Disputes Act.

On behalf of the management it is pleaded that both the workmen were still on probation when their services were terminated. It is alleged that Shri Tara Chand was appointed on 27th February, 1967 while Shri Daulat Ram was appointed on 24th April, 1967. Both of them were appointed on probation for a period of 6 months and it was stipulated in the letter of appointment that the period of probation could be extended at the discretion of the management for a further period of six months or less and in accordance with the terms of the letter of appointment the period of probation of both the workmen were extended for an other six months. It is pleaded that it was a condition of service of both the workmen that during the period of probation their services could be

terminated without assigning any reason and without any notice or pay in lieu of notice and the services of both the workmen were terminated before the expiry of the period of probation because as per report of the departmental head their work was not found satisfactory.

The pleadings of the parties gave rise to the following issues.

- (1). Whether the period of probation of the claimant Sarvshri Daulat Ram and Tara Chand was extended by the management for another six months and they accepted this extension without protest?
- (2) Whether the termination of the services of the claimant was in accordance with the terms of their services and was legally justified? If not to what relief they are entitled?
- (3) Whether the management have violated the provisions of section 33 (1) of the Industrial Disputes Act, 1947, because the services of the claimant have been terminated while their demand for gratuity was pending before the Industrial Tribunal?

The issues framed on 12th August 1968. The case was fixed for evidence for 1st November, 1968, on the date fixed one Shri G. L. Likhiam who said that he was a senior clerk in personal Department of the respondent concern only appeared. He had no letter of authority and therefore, his presence could not be recognised. He produced a letter which purported to bear the signatures of the Manager of the respondent concern in which it was alleged that their Labour Officer, Shri R.P. Jaggi had been operated upon for 'Hernia' in the previous month and he was still sick and was on leave. A prayer was made in that letter that the case be adjourned preferably in the last week of the next month. Since no person authorised to represent the management appeared before the Court, there was no option but to proceed *ex-parte*. Accordingly *ex-parte* evidence of the workman was recorded.

Shri R. P. Jaggi, Labour Officer, subsequently appeared and submitted an application in which a prayer was made that the *ex-parte* proceedings be set aside and the management be given an opportunity to lead their evidence and cross examine their witness of the workman. In this application no reason has been given as to why no authorised person could appear on the date fixed for evidence. If the management knew that their Labour Officer R. P. Jaggi could not appear in Court on the date fixed for evidence an application for adjournment could also have been made earlier on which a notice could have been issued to the workmen but it appears that the management did not consider it necessary to ensure that an authorised representative on their behalf puts in appearance in Court on or before the date fixed for evidence and obtain appropriate order if for some reason the Labour Officer who was conversant with the facts of the case could not appear on the date fixed. Since no authorised representative appeared in Court on behalf of the management on or before the date fixed for evidence for the purpose of obtaining adjournment, there was no option but to proceed *ex-parte*. In the application subsequently submitted on behalf of the management, no reason has been given as to why no person duly authorised to appear on behalf of the management could attend the Court on the date fixed. There is, therefore, no sufficient reason for setting aside the *ex-parte* proceedings and permitting the management to lead their evidence.

I now proceed to give my findings on the issues which have been framed in this case.

Issue No. 1. Shri Daulat Ram has appeared as a witness in support of his case and has stated that he had joined the respondent concern on the 20th December, 1966 at Rs 97.50 on six month probation and after the expiry of the period of probation, his probational period was not extended nor was he ever informed that his work was not satisfactory. He says that his services were terminated on the 26th February, 1968 without giving him any notice. He further stated that his Co-workman Shri Tara Chand claimant was also appointed like him on probation for six month on the 27th February, 1967. His period of probation was extended by three months and his services were terminated on the 26th February, 1968 without giving him any charge-sheet or any warning.

The true letters of appointment. The letter marked A dated the 11th February, 1967 has been issued in favour of Tara Chand claimant while the letter dated the 27th December, 1966 marked B has been issued in favour of Daulat Ram, claimant. In both these letters it is mentioned that the workmen have been appointed on probation for a period of six months and that the period of probation could be extended by further six months or at lesser period at the discretion of the management. The management have further filed two letters dated the 24th February, 1968 by which the services of both the workmen have been terminated with immediate effect on the ground that their work has not been found satisfactory and upto the mark.

So far as Shri Daulat Ram claimant is concerned, the management have no case. The letter marked 'B' by which this claimant was appointed on probation for six months in the 1st instance is dated the 27th December 1966. His services were terminated,—*vide* the letter dated the 24th February, 1968. This means that Shri Daulat Ram had remained in the service of the management for almost 14 months before his services were terminated. Even if it be held that the period of probation of Shri Daulat Ram was extended by an other six months even then his services were terminated after the expiry of the extended period of his probation without giving him any notice to show cause, the termination his services therefore obviously not in accordance with law he is therefore entitled to be reinstated with continuity of service.

Before concluding it may be pointed out that the date of appointment as mentioned in the letter dated the 27th December, 1966 marked (B) does not tally with the date as mentioned in the written statement filed by the management. According to the averments in the written statement Sh. Daulat Ram was appointed as a fitter (Semiskilled with effect from the 24th April, 1967 on probation for period of six months and his period of probation was extended for an other six months,—*vide* letter dated the 23rd October, 1967. Neither of these letters were produced along with the written statement. Shri Daulat Ram in his evidence has stated that his period of probation was not extended. It may be that Daulat Ram was first appointed as a helper on the 20th December, 1966 and then promoted as a Fitter and a fresh letter of appointment given to him which however has not been produced even if the letter in question had been produced it would not have helped the management because the claimant could not lose the benefit of the previous service rendered by him as a helper and he could not have been thrown out of service even if his work as a fitter was not found satisfactory. Secondly in the letter dated the 24th February, 1968 by which the services of Sh. Daulat Ram were terminated, it is mentioned that his work was not found satisfactory but he was not given any opportunity to show cause against the termination of his services.

As regards Tara Chand he too is entitled to be reinstated. His letter of appointment marked 'A' is dated the 11th February, 1967 and he was also appointed on probation for a period of six months in the first instance. According to the evidence of his Co-workman Daulat Ram the period of probaion of Tara Chand was extended by another three months. This means that his period of probation expired on the 11th November, 1967 but his services were terminated with immediate effect,—*vide* the letter dated the 24/26th February, 1968. This means that his services were also terminated after the expiry of the period of his extended probation.

According to the averments in the written statement Sh. Tara Chand was appointed on the 27th February, 1967 on probation for six months and his period of probation was extended by another six months—*vide* letter dated the 27th July, 1967 and the 14th November, 1967 and a period of probation expired on the 26th February, 1968. The management however did not produce the relevant documents along with written statement and there is no evidence to prove these facts. Shri Tara Chand is therefore also entitled to be reinstated.

As regards the back wages Shri Tara Chand has not even bothered to appear in evidence. Shri Daulat Ram did appear as a witness but even he has not stated that after his services were terminated by the respondent, he has remained unemployed. It is no doubt true that it is always for the management to prove that the workman did not remain unemployed and therefore he is not entitled to full back wages on reinstate ment but this contingencies would arise only if the workman in the first instancs states that he was not employed any where else. In the present case we find that Sh. Daulat Ram who appeared as a witness did not state that he was unemployed after the wrongful termination of his services by the respondent and Sh. Tara Chand has not even appeared as a witness. Under these circumstances neither of the claimant are entitled to back wages. I give my award accordingly.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

The 19th February, 1969

No. 467 Dated: The 20th February, 1969.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

(P. N. THUKRAL),

the 29th February, 1969.

Presiding Officer,
Labour Court, Faridabad.

No. 1114-2Lab-69 5254.—In supercession of Haryana Government notification No. 1265-2Lab/68, dated 20th February, 1968 and in exercise of the powers conferred by section 19 of the Punjab Shops and Commercial Establishments Act, 1958 (Punjab Act No. 15 of 1958) and all other powers enabling him in this behalf, the Governor of Haryana is pleased to declare Shri D. A. Karan, Deputy Labour Commissioner, Haryana, Chandigarh, as Chief, Inspector Shops and Commercial Establishments, Haryana.

R. I. N. AHOOJA, Secy.

LABOUR AND EMPLOYMENT DEPARTMENT

The 27th February, 1969

No. 1184-2Lab-69/4968.—The Governor of Haryana is pleased to promote Shri Ram Dass, Head Assistant, as District Employment Officer in the scale of Rs. 200-15-350 on a purely temporary basis with effect from 10th February, 1969 (F. N.) and to post him as District Employment Officer at the District Employment Exchange, Sonapat against the existing vacancy.

R. I. N. AHOOJA, Secy.